

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of:)	
)	
SES AMERICOM, Inc.)	
)	SAT-PDR-20020425-00071
Petition for Declaratory Ruling)	
To Serve the U.S. Market Using)	
BSS Spectrum from the 105.5° W.L.)	
Orbital Location)	
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To: The Commission

REPLY COMMENTS OF CONSUMERS UNION

Consumers Union¹ respectfully submits the following reply comments in support of the above-captioned Petition for Declaratory Ruling filed on May 17, 2002 (the “Petition”) by SES AMERICOM, Inc. (“SES AMERICOM”). In the Petition, SES AMERICOM requests a declaratory ruling from the Federal Communications Commission (the “FCC” or the “Commission”) that it is in the public interest for SES AMERICOM to offer satellite capacity to third parties for their provision of direct-to-home television services to consumers in the United States and certain Caribbean islands. SES AMERICOM will offer this capacity on a satellite to be located at 105.5° West Longitude. Assuming that any technical issues raised by the Petition can be resolved, Consumers Union supports the grant of the Petition, because the new SES

¹ Consumers Union is a nonprofit organization chartered in 1936 under the laws of the State of New York to provide consumers with information, education and counsel about goods services, health, and personal finance. Consumers Union’s income is solely derived from the sale of *Consumer Reports*, its other publications and from noncommercial contributions, grants and fees. In addition to reports on Consumers Union’s own testing, *Consumer Reports* (with approximately 4.5 million paid circulation) regularly carries articles on health, product safety, marketplace economics and legislative, judicial and regulatory actions which affect consumer welfare. Consumers Union’s publications carry no advertising and receive no commercial support.

AMERICOM service could provide more choices for consumers, and provide alternative distribution channels for content owners.

I. AMERICOM2Home is Likely to Spur Competition in the MVPD Market.

Grant of the Petition could bring increased competition not only to the DBS market, but to the entire Multichannel Video Programming Distribution (“MVPD”) market. The increasing consolidation of MVPD service providers, through the pending mergers of EchoStar and DirecTV in the DBS market, and AT&T and Comcast in the cable arena, threatens to increase concentration in the already-concentrated MVPD market. The resulting decrease in the number of programming outlets for content providers could leave consumers with more limited programming choices dictated by industry giant AT&T-Comcast. Moreover, the reduction of MVPD competition is likely result in higher prices for consumers. The granting of this petition, in conjunction with the conditions Consumers Union has requested on the AT&T-Comcast and EchoStar-DirecTV mergers, could help alleviate these concerns.

Addition of the AMERICOM2Home platform to the already limited choices available to programmers and consumers could have the opposite effect, strengthening competition and lowering prices in the MVPD market. Instead of the three (and in many cases two) choices available to most U.S. consumers for MVPD service, a fourth (or third) option will become available through the grant of the Petition. As stated by SES AMERICOM in the Petition, “[t]his increase in the options available to content providers, and through them to the viewing public, is clearly in the public interest.”²

² Petition at 15.

II. The Commission Should View Interference Concerns With Skepticism.

Consumers Union has not studied the technical showing in the Petition, and takes no position on whether the AMERICOM2Home system might cause harmful interference to any existing satellite services. Nevertheless, Consumers Union encourages the FCC to review carefully, any interference concerns raised by EchoStar or DirecTV. These companies have a clear economic incentive to block entry of new competitors, regardless of whether or not there is a legitimate concern about signal interference. Given this bias, the FCC must be vigilant in ensuring that purported interference or other technical concerns are not used to cloak an underlying effort to thwart any increased competition to the incumbents' DBS service.

In this regard, the FCC should take a valuable lesson from the Northpoint proceeding. There, by vigorously raising interference concerns, EchoStar and DirecTV delayed regulatory action on a petition that might have resulted in additional competition to their service offerings.³ The Commission, after acknowledging Northpoint's position that most commenters opposing establishment of its service did so for competitive reasons,⁴ carefully evaluated these interference claims, and ultimately decided that any impact from Northpoint's proposed operations "would not seriously degrade, obstruct, or repeatedly interrupt the provision of DBS."⁵ Here too, the FCC must take any technical concerns raised by the DBS carriers with a grain of salt, and carefully assess whether there are any legitimate technical hurdles to the establishment of the AMERICOM2Home platform. Assuming no such barriers exist, the Commission should find that grant of the Petition is in the public interest.

³ See Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSF FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range, 16 FCC Rcd 10,084 (2000), at ¶ 210.

⁴ Id. at ¶ 211.

⁵ Id. at ¶ 213.

III. Conclusion

For the foregoing reasons, Consumers Union supports the SES AMERICOM Petition, and encourages the Commission to grant it expeditiously.

Respectfully submitted,

CONSUMERS UNION

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